

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROLAND W. FINNEY,

Defendant.

NO. CR-08-095-RHW

**ORDER DENYING
DEFENDANT'S MOTIONS FOR
RECONSIDERATION,
GRANTING THE
GOVERNMENT'S MOTION FOR
STAY**

Before the Court are the Government's Motion for Stay (Ct. Rec. 145) and Motion to Expedite Hearing thereupon (Ct. Rec. 146), and Defendant's Motion to Permit Defendant to File Motion Under Seal (Ct. Rec. 148), Motion for Reconsideration of Court Order Denying, in Part, Defendant's Motion to Suppress (Ct. Rec. 149), and Motion for Partial Reconsideration of Order Granting in Part Defendant's Motion to Suppress, Denying the Government's Motion in Limine (Ct. Rec. 150). These motions were heard on an expedited basis without oral argument.

The Court grants Defendant's motion to file under seal because Defendant's first motion for reconsideration contains personal information of a confidential informant.

As a general rule, the filing of a notice of appeal "confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *United States v. Ortega-Lopez*, 988 F.2d 70, 72 (9th Cir. 1993) (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58

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(1982). Where, as here, the Government appeals under 18 U.S.C. § 3731 a district court's order of suppression, the district court is not automatically divested of all jurisdiction, but may in its discretion enter a stay of further proceedings. *United States v. Gatto*, 763 F.2d 1040, 1050 (9th Cir. 1985)

Defendant's motions for reconsideration ask the Court to revisit aspects of the case involved in the Government's appeal, which are now out of the Court's jurisdiction. Accordingly, Defendant's motions must be denied. Finally, the Court finds that a stay is appropriate here because the appeal concerns evidence containing substantial proof of a material fact.

Accordingly, **IT IS HEREBY ORDERED:**

1. Defendant's Motion to Permit Defendant to File Motion Under Seal (Ct. Rec. 148) is **GRANTED**.

2. Defendant's Motion for Reconsideration of Court Order Denying, in Part, Defendant's Motion to Suppress (Ct. Rec. 149) is **DENIED**.

3. Defendant's Motion for Partial Reconsideration of Order Granting in Part Defendant's Motion to Suppress, Denying the Government's Motion in Limine (Ct. Rec. 150) is **DENIED**.

4. The Government's Motion to Expedite Hearing (Ct. Rec. 146) is **GRANTED**.

5. The Government's Motion for Stay (Ct. Rec. 145) is **GRANTED**. This matter is **stayed** pending resolution of the Government's interlocutory appeal.

IT IS SO ORDERED. The District Court Executive is directed to enter this order and to provide copies to counsel.

DATED this 10th day of March, 2009.

s/Robert H. Whaley
ROBERT H. WHALEY
Chief United States District Judge

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